

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

NECA-IBEW PENSION FUND
*(The Decatur Plan), Derivatively
on behalf of Cincinnati Bell, et al.,*
Plaintiffs,

Case No. 1:11-cv-451
Judge Timothy S. Black

v.

PHILLIP R. COX, et al.,
Defendants.

**ORDER APPROVING PLAINTIFFS' UNOPPOSED MOTION FOR
VOLUNTARY DISMISSAL WITH PREJUDICE (DOC. 80)**

Plaintiffs initiated this shareholder derivative action on July 5, 2011, alleging claims of breach of fiduciary duty and unjust enrichment relating to Cincinnati Bell's 2010 executive compensation. While this case was pending, a similar action was filed in the Hamilton County Court of Common Pleas (*Raul v. Cassidy*, Case No. A 105305). The parties to *Raul* subsequently reached a settlement agreement, which the state court approved in an Order and Final Judgment after notice to the shareholders.¹

In light of the settlement in *Raul*, Plaintiffs filed an unopposed motion seeking to dismiss this case with prejudice (Doc. 80). Pursuant to Fed. R. Civ. P. 23.1(c), “[a] derivative action may be settled, voluntarily dismissed, or compromised only with the

¹ The Court notes that it entered an Order imposing a stay of proceedings in this case pending the resolution of *Raul v. Cassidy*. See Doc. 75. Because that case has been resolved, the stay is now lifted.

court's approval. Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders or members in the manner that the court orders."

Where notice and representation are adequate, a settlement decree in a derivative suit is *res judicata*. *Smith v. Alleghany Corp.*, 394 F.2d 381, 391 (2d Cir. 1968); *see also, Nathan v. Rowan*, 651 F.2d 1223, 1226 (6th Cir. 1981). The state court settlement in *Raul* therefore effectively bars the continuation of this action, and approval of Plaintiffs' Motion for Voluntary Dismissal is appropriate. Accordingly, Plaintiffs' motion is **GRANTED** and this case is hereby **DISMISSED WITH PREJUDICE**. Further, because the shareholders were given notice prior to judicial approval of the *Raul* settlement, the Court finds that no additional notice is necessary.

IT IS SO ORDERED.

Dated: 7/18/12

s/ Timothy S. Black
Timothy S. Black
United States District Judge